

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHRISTINA L. FINNEY

Claimant

VS.

FEDERAL EXPRESS CORPORATION

Respondent

Self-Insured

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Docket No. 239,009

ORDER

Respondent appeals from the April 27, 2000, Order of Administrative Law Judge Jon L. Frobish. The Order denied "respondent's motion for non-production of a videotape of the claimant" prior to respondent questioning claimant about her post-injury activities. Claimant contends the Board does not have jurisdiction to hear this matter at this time as it is not a final order. Those are the only issues before the Board. Oral argument was held on October 13, 2000.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Appeals Board finds it does not have jurisdiction at this time to consider this matter and respondent's appeal should be dismissed.

Claimant's deposition was scheduled for March 29, 2000. The night before the deposition, claimant's attorney contacted respondent's attorney requesting a copy of any videotapes of claimant respondent's attorney may have in his possession. Respondent's attorney advised that he would provide a copy of any videotapes he had in his possession prior to their being admitted into evidence. However, respondent's attorney did not specifically acknowledge whether he had a videotape in his possession. If one did exist, respondent's attorney was refusing to provide it prior to the claimant's deposition on March 29, 2000.

At the deposition, claimant was advised by her attorney not to answer questions regarding her activities since the date of accident unless and until a videotape was provided. This matter went before the Administrative Law Judge upon respondent's "Motion to Compel" claimant to answer questions propounded by counsel for respondent regarding her physical activities since the March 25, 1998, date of accident. The Administrative Law Judge refused to order claimant to answer questions before the videotape was provided.

At oral argument before the Board, respondent's attorney acknowledged that the videotape was discoverable but argued his entitlement to withhold the videotape pending

claimant's testimony in order for all parties and the Administrative Law Judge to have the opportunity to test and assess the claimant's credibility. The Appeals Board notes with interest that respondent's attorney does not object to the discoverability of the tape, but rather to the procedure being followed by claimant's attorney in his attempts to obtain the tape.

K.S.A. 1999 Supp. 44-551 allows review by the Appeals Board from all final orders, awards, modifications of awards or preliminary awards made by an administrative law judge under K.S.A. 1999 Supp. 44-534a. The decision by the Administrative Law Judge to deny respondent's "Motion to Compel" is not a final order, award, modification of award or preliminary award under K.S.A. 1999 Supp. 44-534a. It is, instead, an interlocutory order dictating what procedures will be followed in the gathering of evidence in this matter. That does not constitute an appealable order under K.S.A. 1999 Supp. 44-551.

Additionally, it is not one of the disputed issues listed in K.S.A. 1999 Supp. 44-534a(a)(2) which are deemed jurisdictional before the Board. Therefore, the Appeals Board finds that the respondent's appeal in this matter should be dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated April 27, 2000, remains in full force and effect, and the appeal by respondent from said order should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of November 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steven R. Wilson, Wichita, KS
Gary A. Winfrey, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director